

**The Honorable Christopher M. Alston**  
Hearing Date: July 20, 2023  
Hearing Time: 9:30am  
Hearing Location: Seattle  
Response Date: July 13, 2023

**UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF  
WASHINGTON**

In re:

No. 22-11499-CMA

MIKHAIL NEVLER

## **NOTICE OF MOTION AND**

## **MOTION FOR RELIEF FROM AUTOMATIC STAY**

## I. NOTICE OF MOTION

Date of Hearing: July 20, 2023

Time of Hearing: July 13, 2023

Place of Hearing: Seattle Courthouse, 700 Stewart St., #6301, Seattle, WA 98101

Any party opposing this motion must file and serve a written response by the response date, to-wit, July 13, 2023.

Motion for Relief From Stay  
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## II. MOTION

COMES NOW Mark Roush and Cinda Roush, the owners of real property located at 11423 99th Ave. SW Vashon, WA 98070 (hereafter the “Property”) and creditors listed on that claim filed in this action on December 9, 2022 (Claim #7) and moves the Court for relief from the automatic stay provisions of 11 U.S.C §362 to allow the movants to take legal action to regain possession of the Property currently occupied by Debtor. Mark Roush and Cinda Roush further request the Court to waive the 14-day stay set forth in Bankruptcy Rule 4001 and allow them to forthwith commence legal proceedings to regain possession of the Property.

### III. EVIDENCE RELIEF UPON

This motion is based upon the pleadings on file in this cause, and the Declaration of Mark Roush in Support of Motion for Relief From Stay filed contemporaneously with this motion.

#### IV. BACKGROUND

Debtor filed for Chapter 13 Bankruptcy Relief on September 19, 2022. Movants, Mark and Cinda Roush, filed a claim against the estate in the amount of \$18,053.72 on December 9, 2022 (Claim #7).

The basis for the Roush claim was an agreement between Debtor and Roush that he would make payments of approximately \$1,900.00 each month for the continued occupancy of the Property. The agreement is an oral agreement that was never reduced to writing. The agreement constitutes an oral lease. Debtor breached the oral agreement in January 2022. There is no security instrument granting Roush a security interest in the Property, as Roush is the owner listed on the deed to the Property.



1 //

2 A summary of the pre-petition debt arising from this oral agreement, as set forth in  
3 Roush's claim, is as follows:

5	Jan 2022	\$2,038.64
6	Feb 2022	\$2,038.64
7	Mar 2022	\$2,038.64
8	Apr 2022	\$2,038.64
9	May 2022	\$2,038.64
10	Jun 2022	\$2,038.64
11	Jul 2022	\$2,038.64
12	Aug 2022	\$1,891.62
13	Sep 2022	\$1,891.62
14	Total	\$18,053.72 <sup>1</sup>

15 The post-petition default amounts are as follows:

16	October 2022	\$1,891.62
17	November 2022	\$1,891.62
18	December 2022	\$1,891.62
19	January 2023	\$1,891.62
20	February 2023	\$1,891.62
21	March 2023	\$1,891.62
22	April 2023	\$1,891.62
23	May 2023	\$1,891.62
24	June 2023	\$1,891.62
25	Total	\$17,024.58 <sup>2</sup>

26 A dispute arose when Debtor asserted an ownership interest in the Property, and Debtor  
commenced adversarial proceedings against Roush on November 2, 2022.

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<sup>1</sup> See Declaration of Roush in Support of Motion for Relief From Stay

<sup>2</sup> Id.



1        This Court has adjudicated that Debtor has no ownership interest in the Property (See  
2 Adversary Proceeding at 22-01054-CMA). Just prior to the court's adjudication that Debtor has  
3 no ownership or equity in the Property, Debtor filed an amended plan on March 21, 2023 (ECF  
4 #74).

5              Debtor's amended plan was confirmed by order entered April 15, 2023 ECF #80. As part  
6 of Debtor's amended plan, Debtor listed Mark N. Roush and Cinda J. Roush as secured creditors,  
7 and, under Section VI of the amended plan, elected to surrender the Property.

8              The Amended Plan expressly states that "Debtor requests that upon confirmation, each  
9 creditor to which the Debtor is surrendering property pursuant to [Section VI of the amended  
10 plan] be granted relief from the stays of 11 U.S.C. 362(a) and 1301(a) to enforce its security  
11 interest against the property including taking possession and sale."

12              Mr. and Mrs. Roush allege that the debt owed to them is an executory lease for  
13 occupancy of the Vashon Property, while Debtor's plan lists Mr. and Mrs. Roush as a secured  
14 creditor with a security interest in the Vashon Property.

15              Notwithstanding this apparent confusion as to the nature of Mr. and Mrs. Roush's  
16 interest, they are entitled to relief from the automatic stay, because:

- 21              a. Debtor has affirmatively requested that relief from stay be granted to Mr. and  
22              Mrs. Roush,
- 23              b. The agreement between Roush and Debtor for occupancy of the Property  
24              constitutes an executory lease that was not assumed by the Trustee during the  
25              reorganization process. An executory contract not assumed is deemed rejected.



Roush seeks relief from the automatic stay so they may forthwith commence or continue repossession efforts through appropriate legal channels.

## V. PROPOSED ORDER

A proposed order granting the relief requested is filed contemporaneously with this motion.

Dated this 29<sup>th</sup> day of June, 2023.

/s/ Eric J. Lanza

Eric J. Lanza, WSBA 50042

Attorney for Mark and Cinda Roush



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